

## REMARKS

### Introduction:

Claims 1 through 30 were pending in the patent application when an Office Action mailed April 27, 2005, rejected Claims 1-30.

By way of this Amendment, and without introducing new matter, the Applicants have amended the Claims. Applicant respectfully requests entry of the amendment and reconsideration and allowance of all claims pending in this patent application.

### Rejections under 35 U.S.C. § 102:

The Office Action rejected Claims 1, 11, and 12 as being anticipated by applicant's admission of prior art. Applicant respectfully traverses for the reasons. The Examiner's parallel rejections to these claims for obviousness reasons are addressed in the following section relating to Section 103 rejections, below.

Applicant respects the Examiner's notation that Claims 1, 11 and 12 do not positively recite the treats in the container, a different way of stating that a prior art coffee cup product and a prior art lid product are not patentable despite a claimed new use. *Traitel Marble Co. v U.T. Hungerford Brass*, 18 F.2d 66 (2nd Cir. 1927). Claims 1 and 12 are amended herein to include the animal treats as present in the container as part of a *packaged animal treat*. Claim 11 depends from Claim 1.

Applicants therefore request entry of the Amendment and reconsideration and allowance of Claims 1, 11, and 12.

### Rejection of Claims 2-57 under 35 U.S.C. § 103(a):

The Office Action rejected Claims 1-3, 5, 11-14, 16, 21-23, and 27-30, as being obvious under Keane, Nash, Seattle Times, New York Times, and admitted Prior Art in view of Robinson, Bezak, Times Union, Tilman, Shadrach, and Yuguchi. The Office Action rejected Claims 4, 15, and 24, in view of the listed references for Claim 1, and in further view of Shelby. The Office Action rejected Claims 6-10, 17-20, 25, and 26 in view of the listed references for

Claim 1, and in further view of Vangertruyden, Nugent, and Barnes. Applicants respectfully traverse.

Claims 1, 12, and 21, as amended include limitations of *paper coffee cups* with volumes of 8 oz., 12 oz., or 20 oz., containing a plurality of animal treats with reclosable plastic lids fastened to the rim of the coffee cup.

Keane, Nash, Seattle Times, New York Times: Keane, Nash, Seattle Times, and New York Times describe containers of various configurations. These references do not disclose *paper coffee cups* with volumes of 8 oz., 12 oz., or 20 oz, in combination with animal treats.

Robinson: Robinson, U.S. Patent No. 4,934,525 discloses a coffee sampler kit with a container that resembles a giant *coffee mug*. Robinson does reference a snap-on cover over the open top of the container, but does not reference a fastening to a rim of the container, which is not a coffee cup in any event. Candies are included in the packaging and shown loose in a coffee mug. Note that mugs do not have the stackability of paper coffee cups and plastic lids consistent with packaging practices at coffee outlets.

Bezak: Bezak, U.S. Patent No. 6, 596,328, discloses a cap nesting within an opening if a container.

Times Union: The Times Union article references FROSTY PAWS, a dog ice cream like product stored in containers, including single-serving plastic ice cream cups, without a specific description of whether the cup is the same as containers for human food. Times Union does not disclose animal treats held in a container made for human food, but more specifically does not disclose animal treats (discrete room temperature treats) held in a container made for human food of a different type or composition (hot liquid) than the pet treats.

Tilman and Shadrach: Tillman (U.S. Patent 6, 467,956) describes dog biscuits in zipper closures. Shadrack (U.S. 2004/0099719) discloses dog treats in packages (package type not disclosed) held in a dispenser. Neither teach or suggest combination with paper coffee cups, or the use of paper coffee cups for animal treats. Tilman and Shadrach suggest conforming containers for conforming materials.

Yuguchi: Yuguchi (U.S. 6,844,015) discloses a plastic coffee cup lid snappable to a coffee cup for *hot beverages*, enclosing in the cup a beverage pouch.

**Claims 1, 12, and 21:**

Turning now to the specific language of the claims, Claims 1, 12, and 21, as amended include limitations of *paper coffee cups with volumes of 8 oz., 12 oz., or 20 oz., containing a plurality of animal treats with reclosable plastic lids fastened to the rim of the coffee cup.* The examiner's discussion that animal treats are packaged, and that a variety of packaging is available in discrete prior art citations is respected. However, the art references do not teach or suggest these claim limitations. Further, the references do not provide a suggestion or motivation for their combination.

None of the cited references utilize paper coffee cups of the listed sizes for packaging any materials. The references do suggest an enclosing volume for products, but not the elements of these claims. None of the cited references suggest incorporating a plurality of animal treats in the present packaging. The container types cited by the Examiner do not describe the enclosure claimed here in this combination.

In addition to lacking the elements of the claimed invention, the cited art doesn't teach or suggest their combination in the manner or use of this invention. The cited art enclosure use, where the enclosure is described, is based upon enclosed product type. Applicant respectfully suggests that the use of a paper coffee cup and rim fastened and reclosable lid, utilized for hot human consumable liquids in the prior art, for a plurality of discrete room temperature animal treats is not a properly "analogous or cognate" use of these products forming a basis for an obviousness rejection. *Research Corp. v. Nasco Indus., Inc.*, 501 F.2d 358, 360 (7th Cir. 1974). Method claim 21 is properly allowable, over the prior art uses.

The relative simplicity of the present invention is particularly subject to 20-20 hindsight during considerations of obviousness: "The way to avoid the "attraction of a hindsight-base obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. ... *Close adherence to this methodology is especially important in the case of less technologically complex inventions*, where the very ease with which the invention can be understood may prompt one to fall victim to the insidious effect of a hindsight syndrome where that which only the inventor taught is used against its teacher." *In re Dembiczak*, 173 F.3d 994, 999 (Fed. Cir. 1999), in part citing *In re Rouffet*, 149 F.3d 1350 (Fed. Cir. 1998). While it is very easy to conceive the present invention packaging for sale of animal

treats at an espresso stand, once disclosed, the listed limitations in combination are not suggested or motivated by anything but the applicants' teaching. The materials are used separate from their previous intended function and gain a new and valuable use and convenience from their combination. Applicant therefore respectfully traverses the examiner's obviousness rejections of Claims 1, 12, and 21, especially as amended with the listed limitations herein.

**Claims 2-11, 13-20, 22-27, and 29-30:**

Claim 28 is withdrawn. Claims 2-11 depend from Claim 1, Claims 13-20 depend from Claim 12, and Claims 22-27 and 29-30 are allowable for the same reasons as Claims 1, 12, and 21, and also due to additional limitations contained in those claims. Consistent with the prior discussion, applicants note that the additional cited references Shelby, Vangertruyden, Nugent and Barnes, do not disclose the limitations of allowable Claims 1, 12, and 21, and do not suggest or motivate the combination claimed in the present invention.

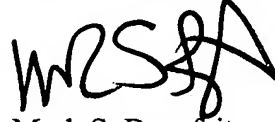
**CONCLUSION**

Applicant respectfully submits all of the pending claims (claims 1-27, 29-30) are patentable over the cited references and are in condition for allowance. Applicants respectfully request entry of the amendment, and reconsideration and allowance of all claims in this patent application. Applicant has scheduled an interview with the examiner where applicant proposes to discuss the above listed amendment and argument.

If the Examiner has questions, the Examiner is invited to contact the Applicant's attorney listed below.

Respectfully submitted,

BLACK LOWE & GRAHAM<sup>PLLC</sup>



Mark S. Beaufait

Registration No.: 48,529

Direct Dial: 206.464.1380

**MAIL CERTIFICATE**

I hereby certify that this communication is being deposited with the United States Postal Service via first class mail under 37 C.F.R. § 1.08 on the date indicated below addressed to: MAIL STOP AMENDMENTS, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

September 27, 2005  
Date of Deposit

Wendy Saxby  
Wendy Saxby

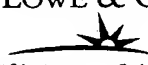
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BLACK LOWE & GRAHAM<sup>PLLC</sup>

  
701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
206.381.3300 • F: 206.381.3301